**THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Civil Revision No.3818 of 2006**

**Date of Decision: 7- 8 - 2006**

**Beant Singh and others** **.....Petitioners**

**v.**

**Surinder Kaur and another** **.....Respondents**

**CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA**

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**Present:** Mr.Ashok Singla, Advocate
for the petitioners.

Mr.Vijay Lath, Advocate and
Mr.Naveen Sharma, Advocate
for the caveator-respondent No.1.

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**P.S.PATWALIA, J.**

The present revision petition challenges order dated 23.12.2005 passed by the learned Additional Civil Judge (Sr.Division), Anandpur Sahib and the order dated 6.6.2006 passed by the learned Additional District Judge, Rupnagar whereby an application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking ad interim injunction filed by the plaintiff has been decided.

Plaintiff has filed the suit for permanent injunction restraining the defendants, petitioners in this revision petition, from interfering in the use of passage marked as ABCD and further not to make any encroachment over the passage. Along with the suit an application for ad interim injunction was also filed. It is the case of the plaintiff that she has her residential house in the land

bearing Khasra No.416/28 which was constructed about 20/25 years back. There is a passage marked as ABCD which is being used by the plaintiff. Adjoining to the house of the plaintiff, there is the house of one Gurdev Singh and the windows of the house of Gurdev Singh also open towards the street. The property of the defendants bearing Khasra No.416/30 is on the southern side of this passage. The passage is therefore in between the property of the plaintiff and the defendants. The plaintiff has contended that the defendants wanted to merge the passage in their own property illegally and forcibly.

As against this, the defendants denied that there is any passage in existence as shown in the site plan. It is their contention that there is no passage between Khasra Nos.28 and 30. It was contended by the defendants that they are cultivating their land and have planted trees in the same. It is further contended that one Charan Singh son of Ganda Singh had filed a petition under Section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 for carving out a passage within the land of the defendants but the petition was dismissed on 27.7.1999.

The trial Court after hearing the parties directed maintenance of status quo qua the actual existing possession on the spot till the decision of the suit. Aggrieved against the said decision, the plaintiff filed an appeal and the defendants filed cross objections. The lower Appellate Court found that the plaintiff was not claiming passage through the land of the defendants bearing Khasra No.416/30. The claim of the plaintiff is that in fact on the site there was a passage in existence. The Court found that although no passage was shown in the Aks Latha prepared in the year 1968-69 but a demarcation was conducted on 10.1.2004 by the office of the Kanungo as a Local Commissioner and it was found during the demarcation that even after completing the area of Khasra No.416/30, there was excess land to the width of 2 Karams which was being used as a passage. The observations of the lower Appellate Court are as hereunder:-

"The plaintiff is claiming a passage on the southern side of his house and her house is admittedly in Khasra no.416//28, situated in village Zindbari (Dhahe), Tehsil Anandpur Sahib, Distt.Ropar. The plaintiff has placed on record, the site plan showing the existence of kh.No.416//30(1-12) which is owned by the defendants on the southern side of the passage. So plaintiff is not claiming the passage through the land of defendants bearing kh.No.416//30(1-12) and is claiming passage on the northern side of khasra no.416//30. From the copy of Aks-latha placed on record, on the northern side of khasra no.416//30 are khasra numbers 416//28 and kh.No.416/29 and they are adjoining to khasra no.416//30. Although no passage is shown in this Aks-Latha prepared in the year 1968-69 but the copy of demarcation report placed on record shows that a demarcation was conducted on 10.1.2004 by the office Qanungo as a Local Commissioner and he found that after demarcation kh.No.416//30 and after completing its area, there is excess land to the width of 2 Karams and this excess land is being used as a passage (Pagdandi) and this passage touches the other pucca street - So as per this report it is evident that the passage found in existence is not in Khasra No.416//30 but in excess area after completing this Khasra number. As per the dimensions mentioned in the Aks-Shajra. Similarly, there is another report of Field Quanungo dated 29.1.2004 which also shows that although, according to the revenue record, there is no passage between Kh.No.30 and Khasra No.28 and 29 but as per the spot a passage is in existence between these Khasra numbers which touches the pucca street on the eastern side and pucca road on the western side and this passage is being used by the Gram Panchayat. The photograph placed on record also prima facie establish the

existence of kacha passage and the door and windows of the house of plaintiff and other houses open towards this kacha street in dispute. Moreover, the defendants have claimed that they planted Poplar trees in their land and this photograph also depict that the Poplar trees were planted after lefting the place of passage. Moreover, the site plan produced on record by the defendants also show their intention that they have shown more area to their Khasra number 416//30 than the actual area as depicted in Aks-Shajra. As per Aks-Shajra, western side of this Khasra number is 6 Karams which means 33' but the site plan produced by the defendants show this width on western side as 42' which means more space than the actual width. The facts of citations cited by the Ld. Counsel for the respondents are distinguishable from the facts of the present case as in those cases, there was a dispute qua the possession over the suit property and revenue record was corrected during the pendency but in the present case, the existence of passage is in dispute which prima facie established by the documents placed on record by the plaintiff. So simply that the passage is not shown in the Aks-Shajra, the other documents prepared by the Field Quanungo by conducting demarcation cannot be ignored at this stage. Moreover, the plaintiffs are claiming passage after leaving the area of Kh.No.416//30. The Kh.No.28 and 29 of Rectangle 416 are shown as adjacent on the northern side of Kh.No.30. So if we presumed that there is no excess area between these Khasra numbers even in that case, the plaintiff is claiming a public passage in her own land which is not affecting in any manner to the area of defendants."

It was thus found that the plaintiff was not claiming passage from the land of the defendants. It was also found that the passage was actually in existence

on the site. Thus, the order of status quo qua the disputed passage till the disposal of the suit made by the trial Court was upheld.

It is clear from a perusal of the facts mentioned above that factually on actual demarcation it was found that the area of the defendants, petitioners in this revision petition, was complete and after completing this area, a passage of 2 Karams existed on the site. Secondly it was also found that the passage was actually existing on the site. Since it has been found that the passage exists on the site and it has also been found that the area of the defendants is complete in Khasra No.416/30, a prima facie case is made out in favour of the plaintiff and the balance of convenience also lies in her favour that the order of status quo be maintained. Therefore, I find no reason to interfere in the orders made by the Courts below.

The present revision petition is accordingly dismissed.

**( P.S.PATWALIA )**
**JUDGE**

**August 7, 2006.**

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